FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Cri. Application No. 8462 of 2005
IN
CRIMINAL APPEAL . 1233 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. Court's or Judge's orders

Mr. M. J. Bhatt for applicant
Mr. V. B. Konde Deshmukh APP for State.

CORAM: B.H. MARLAPALLE
&
MRS. ROSHAN DALVI JJ.
Reserved on 16/2/06

Delivered DATE: 27/2/2006

P.C.:

1. This application is moved by the original accused no.2 in Sessions case No. 30 of 2004 in which a judgment has been passed on 7.12.05 by the 2nd Addl. Sessions Judge Thane convicting the applicant for the offence punishable under section 302 read with 34 IPC. The original accused no.1 has also been similarly convicted.
2. It was the case of the prosecution that the accused no. 1 gave a blow with an iron rod on the head of the deceased Lalchand Prajapati on 17.9.03 at about 10.30 p.m., which lead to the death of the said victim. At the time of the said incident the applicant

(original accused no. 2) was present and instigated the accused no.1 to give the said blow.

3. The prosecution case is mainly based on four witnesses, namely, PW 1 Balkrishna, P.W. 2 Shivaji, P.W. 3 Kantidevi and P.W. 4 Sonu. P.W. 2 Shivaji and P.W. 4 Sonu claim to be the eye- witnesses even for the second incident in which it was alleged that accused no.1 assaulted the deceased Lalchand on his head with an iron pipe and accused no.2 gave a blow with an iron rod on the head of Lalchand. Similar statement was made by P.W. 4 Sonu as well in his examination-in-chief implicating the present applicant – accused no.2. However, in the cross – examination of both these witnesses the defence counsel brought out that there was improvement in their statements regarding the culpability of accused no.2 as compared to their respective statements recorded by the police. In addition, P.W. 1 was not an eye witness to the second incident regarding the assault on Lalchand which resulted in his death and he had come to know the said incident through someone else. P.W. 3 Kantidevi was also not an eye witness to the second incident.

4. The evidence of PW 5, the Medical Officer, shows the external as well as internal injuries. Her deposition shows that the injuries mentioned in the post – mortem report can be attributed to both the iron bar and iron pipe, both of which were shown to her. However, her report shows only one injury on the head of the deceased.

5. The evidence of the Investigating Officer PW 10 shows that the assaults attributed to the applicant were not mentioned in the statement of the witnesses PW 2 and PW 4.
6. Though the presence as well as the instigation by the applicant is seen from the evidence, the same role in the offence cannot be attributed to the applicant.
7. The applicant was on bail pending the trial. Consequently a case for releasing him on bail, pending the appeal, is made out by the applicant. The applicant shall be released by suspending the order of sentence, on the same bail earlier given by the Sessions Court. The applicant shall however, execute a fresh bond.

(MRS. ROSHAN DALVI J.) (B.H. MARLAPALLE J.)